

STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

Ken Orttel,

Complainant,

vs.

Michael Knight,

Respondent.

**NOTICE OF DETERMINATION OF
PRIMA FACIE VIOLATION**

AND

**NOTICE OF AND ORDER FOR
EVIDENTIARY HEARING**

To: Ken Orttel, 2772 Bunker Lake Blvd. NW, Andover, MN 55304 and Michael Knight, 4660 175th Avenue NW, Andover, MN 55304.

On November 4, 2004, Ken Orttel filed a Complaint with the Office of Administrative Hearings alleging a violation of Minn. Stat. sec. 216B.04 in campaign material distributed by Michael Knight. Complainant and Respondent were candidates for the Andover City Council in the election on November 2, 2004. After reviewing the Complaint and attached documents, the undersigned Administrative Law Judge has determined that the Complaint sets forth a prima facie violation of section 211B.04.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN that this matter will be scheduled for an evidentiary hearing to be held at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota 55401, before three Administrative Law Judges. The evidentiary hearing must be held within 90 days of the date the complaint was filed, pursuant to Minn. Stat. § 211B.35. You will be notified of the date and time of the evidentiary hearing, and the three judges assigned to it, within one week of the date of this Order. The evidentiary hearing will be conducted pursuant to Minnesota Statutes § 211B.35. Information about the evidentiary hearing procedures and copies of state statutes may be obtained online at www.oah.state.mn.us and www.revisor.leg.state.mn.us.

At the evidentiary hearing all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should bring with them all evidence bearing on the case with copies for the Administrative Law Judge and opposing party.

At the conclusion of the evidentiary hearing, the Administrative Law Judges will choose to: (1) dismiss the complaint, (2) issue a reprimand, (3) find a violation of 211B.06, and/or (4) impose a civil penalty of up to \$5,000. The panel may also refer the complaint to the appropriate county attorney for criminal prosecution. A party aggrieved

by the decision of the panel is entitled to judicial review of the decision as provided in Minn. Stat. §§ 14.63 to 14.69.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401, or call 612/341-7610 (voice) or 612/341-7346 (TTY).

Dated: November 5, 2004

S/ George A. Beck
GEORGE A. BECK
Administrative Law Judge

MEMORANDUM

The relevant section of the Fair Campaign Practices Act provides as follows:

[211B.04] (a) A person who participates in the preparation or dissemination of campaign material other than as provided in section [211B.05](#), subdivision 1, that does not prominently include the name and address of the person or committee causing the material to be prepared or disseminated in a disclaimer substantially in the form provided in paragraph (b) or (c) is guilty of a misdemeanor.

(b) Except in cases covered by paragraph (c), the required form of disclaimer is: "Prepared and paid for by the committee, (address)" for material prepared and paid for by a principal campaign committee, or "Prepared and paid for by the committee, (address), in support of(insert name of candidate or ballot question)" for material prepared and paid for by a person or committee other than a principal campaign committee.

....

(d) Campaign material that is not circulated on behalf of a particular candidate or ballot question must also include in the disclaimer either that it is "in opposition to (insert name of candidate or ballot question....)"; or that "this publication is not circulated on behalf of any candidate or ballot question."

....

(f) This section does not apply to an individual or association who acts independently of any candidate, candidate's committee, political committee, or political fund and spends only from the individual's or association's own resources a sum that is less than \$500 in the aggregate to produce or distribute campaign material that is distributed at least seven days before the election to which the campaign material relates.

The Complainant has submitted a copy of a campaign flyer supporting the Respondent for election to the Andover City Council. The Complainant alleges that it was delivered to a large portion of the City of Andover from about October 29 to October 30, 2004. Since the flyer does not appear to contain a disclaimer, a prima facie violation is found and this case will be set for an evidentiary hearing.

G.A.B.